REMARKS

In reply to the Office Action dated October 21, 2005, Applicant has amended claims 2, 6, and 33 to clarify the claimed invention, and added new claims 47-48 to protect additional aspects of the elected invention. As a result of this Amendment, claims 2, 6, 17, 20-33, and 47-48 are currently pending. Applicant respectfully requests appropriate rejoinder and examination of any withdrawn claims in the event the Examiner determines that a generic claim is allowable.

As discussed on pages 2-4, ¶ 3, of the Office Action, the Examiner rejected claims 2, 6, and 27 under 35 U.S.C. § 103(a) as being unpatentable over Odom et al. (U.S. Patent No. 6,058,379) in view of Tuck et al. (U.S. Patent No. 6,115,698). Moreover, according to the rationale discussed on pages 4-5, ¶ 4, of the Office Action, the Examiner rejected claims 26, 29, and 30 under 35 U.S.C. § 103(a) as being unpatentable over Odom et al. in view of Tuck et al., and further in view of Smith (U.S. Patent No. 6,502,076). Finally, as set forth on pages 5-9, ¶ 5, of the Office Action, the Examiner rejected claims 32 and 33 under 35 U.S.C. § 103(a) as being unpatentable over Odom et al. in view of Tuck et al. and further in view of Conklin et al. (U.S. Patent No. 6,141,653).

The applied references, however, fail to render the claimed invention unpatentable. Each of the claims recite specific combinations of features that distinguish the invention from the prior art in different ways. For example, independent claim 2 recites a combination that includes, among other things:

> inputting a sale offer parameter for randomly generating at least one sale offer to purchase a product or service at an offer price substantially equal to a delivery price associated with the transaction, the

> delivery price being less than a current value of the offered product or service in a competitive marketplace,

(amended claim 2, ll. 4-7). Independent claim 6 recites another combination that includes, for example,

> displaying, on the web site, a sale offer to purchase a product or service at an offer price substantially equal to zero to the at least one selected buyer at a random point in time unknown to the buyer,

(claim 6, ll. 3-6). Finally, independent claim 33 recites a combination of that includes, for instance,

> wherein the at least one term associated with the randomly generated sale offer comprises an offer price substantially equal to a delivery price associated with sending the offered product or service to the buyer, the delivery price being substantially less than a current market value of the offered product or service in a competitive market,

(claim 33, ll. 32-36). At the very least, Odom et al., Tuck et al., Conklin et al., and Smith fail to disclose or suggest any of these exemplary features recited in the independent claims.

The Examiner has failed to establish a *prima facie* case of obviousness for at least four reasons. First, the Examiner has not demonstrated that Odom et al., Tuck et al., Conklin et al., or Smith, taken alone or in combination, discloses or suggests each and every feature recited in the claims. *See* M.P.E.P. § 2143 (7th ed. 1998). Second, the Examiner neglected to show the existence of any reasonable probability of success in modifying the applied references to somehow result in the claimed invention. *See id.* Third, the Examiner has not identified any suggestion or motivation, either in the teachings of the applied references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the Odom et al. system in a manner that could somehow result in the claimed invention. *See id.* Finally, the Examiner has not

explained how his obviousness rationale could be found in the prior art — rather than a hindsight reconstruction of Applicant's own disclosure. *See id.*

As discussed in the Amendment filed on January 4, 2005, Odom et al. discloses a real-time network exchange that allows buyers to electronically and competitively bid on goods and services to reach a market price for purchasing the good or service and allows the seller to interactively participate in the competitive bidding process. *See, e.g.,* Abstract. Odom et al., however, fails to provide any disclosure whatsoever of the following features of independent claims 2, 6, and 33:

- inputting a sale offer parameter for randomly generating at least one sale offer to purchase a product or service at an offer price substantially equal to a delivery price associated with the transaction, the delivery price being less than a current value of the offered product or service in a competitive marketplace," as recited in independent claim 2;

- "displaying, on the web site, a sale offer to purchase a product or service at an offer price substantially equal to zero to the at least one selected buyer at a random point in time unknown to the buyer," as recited in independent claim 6; and

- "wherein the at least one term associated with the randomly generated sale offer comprises an offer price substantially equal to a delivery price associated with sending the offered product or service to the buyer, the delivery price being substantially less than a current market value of the offered product or service in a competitive market," as recited in independent claim 33.

Instead, Odom et al. teaches away from the claimed invention by disclosing the use of a competitive bidding process for offering products or services for sale at the highest possible market value. For instance, Odom et al. discloses that:

> The potential purchaser may make a bid on an item that is currently being viewed and the information is processed in step 220. Once bid is selected, the client may be provided with the current highest bid for the item, and a window entering the required information for making a bid. In order to be accepted, the bid must meet certain criteria. For example, the bid must be higher than the current highest bid . . . In another embodiment

> of the invention, bids are not transmitted to the host if they are irrelevant. Irrelevant bids may be bids that are less than the current 'best' bid.

Col. 6, ll. 21-48 (emphasis added). As a result, Odom et al. cannot anticipate or render obvious independent claims 2, 6, and 33, as required by 35 U.S.C. § 103(a).

Moreover, Tuck et al. fails to overcome the shortcomings of Odom et al. Tuck et al. discloses an apparatus and system for trading electric energy. *See* Abstract. Tuck et al., however, fails to disclose or suggest an "an offer price substantially equal to a delivery price associated with the transaction, the delivery price being less than a current value of the offered product or service in a competitive marketplace," as recited in independent claim 2. Nor does Tuck et al. disclose or suggest "an offer price substantially equal to zero," as recited in independent claim 6. Finally, Tuck et al. fails to provide any disclosure whatsoever of "an offer price substantially equal to a delivery price associated with sending the offered product or service to the buyer, the delivery price being substantially less than a current market value of the offered product or service in a competitive market," as recited in independent claim 33

By contrast, Tuck et al. teaches away from the claimed invention. For instance, Tuck et al. discloses the use of an automated trading system for permitting a utility to view and purchase energy at current or real-time market prices. As Tuck et al. explains:

> A need exists for a system which creates substantial efficiency gains by automating this trading process over the current method of using the phone. This method of trading energy should allow utilities to simultaneously view ***real-time market prices*** and to quickly consummate the best opportunities.

Col. 2, ll. 4-9 (emphasis added). Tuck et al., whether taken alone or in combination, thus cannot render independent claims 2, 6, and 33 unpatentable under 35 U.S.C. § 103(a).

Conklin et al. and Smith also fails to remedy the deficiencies of Odom et al. For example, the Examiner relies upon Conklin et al. to allegedly disclose the existence of "the steps of iteratively negotiating multiple variables, documenting the transaction, providing payment options and transferring the payment amount online." Outstanding Office Action at 8. And the Examiner relies upon Smith solely to purportedly disclose the use of a "random frequency device." *Id.* at 13. Modifying the teachings of Odom et al. and/or Tuck et al. with the teachings of Conklin et al. and/or Smith thus cannot overcome the shortcomings of Odom et al. discussed above.

For the foregoing reasons, the applied references all fail to disclose or suggest each and every element recited in independent claims 2, 6, and 33. Moreover, claims 17, 20-32, and 47-48, which each depend upon the independent claims, respectively, recite additional limitations that are neither disclosed nor suggested by any of the cited references, taken either alone or in combination. Thus, the dependent claims are allowable for at least the same reasons discussed above with respect to the independent claims.

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of all the pending claims 2, 6, 17, 20-33, and 47-48. Should it be necessary to resolve any additional concerns and expedite the issuance of a Notice of Allowance, the Examiner is invited to contact Applicant's representative at (202) 408-6052.

Please grant any extension of time to the extent required to enter this response and charge any fees required to our Deposit Account No. 06-0916.

Respectfully submitted,

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